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JUDGE GEMMILL ON CRIME AND PUNISHMENT.

that were not so. And when we come to the observation of any particular set of phenomena or the interpretation of their significance, science does not know and never will know any magical formula which will prevent men erring in their judgments. The best opportunity of reaching a correct conclusion as to a scientific or any other fact is the presentation of opposing views and the subjection of them to critical analysis.

It may perhaps be worth while to suggest that so far as cause for dissatisfaction exists the remedy may and must be found in higher standards of professional ability and ethics, both in the legal and medical professions, rather than in legislation of any character. The legal profession has recently been paying some attention to the subject of professional ethics, as is shown by the codes of ethics adopted by many bar associations. While these may not be of much value in themselves they at least stir up thought and attention to these subjects. A similar stirring up of attention in the medical profession might be of equal benefit. But does it not seem probable that the factor which more than any other has contributed to the dissatisfaction with expert testimony is the lack of ability in the legal profession to intelligently present and deal with this species of evidence? Is it not a fact that too frequently in a case involving scientific questions the attorney is trying to get before the jury evidence which he himself does not clearly understand? Does he not usually go to the examination room with a few half-baked ideas hastily imparted by the expert on whom he relies, set the expert to talking and trust to luck that something favorable to his contention will develop? There seems to be too much reason to believe that careful and adequate preparation of the facts of cases involving scientific questions is the exception rather than the rule, and that there is a general lack of a feeling of responsibility in the profession for such preparation. The lawyer tries to shoulder it on the expert. It is certainly as much the duty of counsel to master the facts with which he has to deal in cases involving scientific questions as in other cases. If this duty were always performed with ability and fidelity would not the cause for a large part of the dissatisfaction with expert testimony be removed? Certainly this factor should not be overlooked in any discussion of the subject.

E. L.

JUDGE GEMMILL'S VIEWS ON CRIME AND PUNISHMENT.

In the July, 1910, number of the JOURNAL appeared a most interesting article by Judge William N. Gemmill of Chicago upon the subject of crime and its punishment in Chicago. The conclusions

of a municipal judge in a metropolitan center are always of special interest, and are pretty generally accepted as the product of a considerable first-hand experience and ripe deliberation.

One is a bit disconcerted to find, however, in the midst of so much that is interesting a statement that "sociologists, given this data (i. e., facts regarding the criminal's ears, color and shape of the eyes, height of brow, form of head, etc.), will tell you to a certainty what will be the prisoner's conduct in the future, and what will be the conduct of all his progeny, even to the third and fourth generations."

Of course, this is but a playful dig on Judge Gemmill's part at what he undoubtedly feels to be a too positive standpoint taken by some who set much store upon physical stigmata, and we would not question too closely whether it will not thus strike everyone who reads the statement. But passing on to a number of other statements, we cannot feel quite so confident that they are intentional exaggerations, or that they will be so regarded.

Judge Gemmill advocates the certainty of punishment as the most effective way of reducing crime. "No fact is more demonstrable than that the punishments prescribed by the criminal code are greater preventives of crime and wrongdoing than all the churches, schoolhouses and reform organizations in the land." "Criminal statistics clearly prove that crimes have increased or decreased just in the proportion that the punishments therefor have been swift and sure."

Without questioning the proposition that the law's delay may lessen the fear of punishment, we can regret that perhaps the necessary space limitations of Judge Gemmill's article prevented the presentation of such criminal statistics as would clearly prove these theses. Indeed, the absence of statistics is frequently to be regretted in the Judge's article, and one is often forced to believe that his conclusions, although stated in the form of quite broad generalizations, are probably based largely upon Chicago experiences and figures.

For instance: "The habitual taking of strong drink into a man's system is certain to result in his becoming a drunkard, a vagabond and an outcast." Now, while in the opinion of many persons this might be a consummation devoutly to be wished, cold facts may even show, elsewhere than in Chicago, that while the habitual use of strong drink frequently results in eventual disease and death, the devotees of liquor manage often, and perhaps generally, to escape the alcoholic ward, the hobo camp, the almshouse and the potter's field, and even die in their own beds in their own homes. In short, the generalization seems too broad.

Should we not also question, perhaps, the statement that "to-day housebreaking in the night time is almost unknown?" As these words are penned there comes from a suburb of Chicago an account

of the death of a railroad president, fatally shot in his own home at 1:30 in the morning by an alleged burglar. Whether this was actually a murder or a suicide in this special case, the event was, according to the daily press, "the climax to a reign of crime that has driven the residents of the North Shore almost to desperation."

Indeed, as we read on, we cannot help desiring to see the statistics upon which the writer of the article has based the generalization that "the counterfeiter has gone," and it suggests itself that a careful study should be made of a number of American cities to discover the confirmation of the rather startling statement that "homicides are usually committed by men and women who had hitherto been useful and law-abiding citizens." We do not say that this is not a fact, but we feel that for general information such facts should be accompanied by such tabulated statistics as would enable readers to enter thoroughly into the study of this very interesting field of research.

The problem of drunkenness and its treatment is given considerable space in Judge Gemmill's paper. Drunkenness in Massachusetts is stated in the article to be constantly upon the increase, notwithstanding the parole (i. e., probation) law of that state, "more than three times as many people being sent to prison in Massachusetts for drunkenness as are sent to prison in Illinois for the same offense, although the population of Illinois is twice that of Massachusetts."

Elsewhere in the article, however, we find that perhaps the bases of comparison between the two states are not so alike as to justify in all particulars the comparison. For what does Chicago, according to the article, do with its "drunks?" Judge Gemmill states that "the police of this city (Chicago) never arrest anyone upon the charge of drunkenness who is not helplessly drunk." Yet "of 75,000 persons brought into the criminal courts of Chicago each year, a large per cent are arrested for drunkenness." And as to treatment, Judge Gemmill writes: "Out of over 5,000 cases of drunkenness heard by me, not over 100 have been fined, and these were upon the verge of delirium tremens and needed immediate care." This seems to indicate that they received imprisonment in default of ability to pay their fine, for, of course, delirium tremens is not alleviated by the payment of a fine. The article does not give figures showing the total commitments for drunkenness, and we seem obliged to draw our inferences from the statement that "nine out of ten of the men and women who get drunk and are arrested for it, and are compelled to sleep off their drunks in the police station, have been punished sufficiently and will never repeat the offense. . . ." "What has been my practice," continues the writer of the article, "in this regard, I am sure has been the general practice of nearly all of the judges of the Municipal Court. The story, often repeated, that drunkards are sent

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to prison and their wives and children are left to starve, is untrue. So far as I have been able to learn, not a single drunkard has been sent to jail during the last year and a half who had a family dependent upon him, unless it was done at the instance of the wife or the members of the family and for their protection."

Massachusetts, on the other hand, arrests thousands of intoxicated persons who obviously in Illinois, or at least in Chicago, would be left at liberty. Hence, it is perhaps not quite accurate to cite the Bay State as having three times as many criminals in her prisons as has the state of Illinois, when a large proportion of these "criminals" in Massachusetts are committed for intoxication, which Judge Gemmill does not in Illinois look upon in most instances as a crime deserving punishment by imprisonment.

In short, increase or decrease in crime cannot, it would seem, be accurately measured by the number of arrests or of convictions alone, nor by the number of criminals confined in the correctional institutions of a state. The Golden Rule policy of Cleveland, or the Chicago method of court procedure described by Judge Gemmill reduces greatly the number of imprisonments for drunkenness, that offense figuring highest of all in the list of the causes of commitment in the penal institutions of the United States, according to the special census of 1904.

We ought hardly to overlook, in this connection, one other statement in the article, namely, that "California has a larger percentage of criminal population than any other state in the Union, and Massachusetts ranks third in crime." Our attention has been called by a letter to the fact that the statement becomes misleading when out of its context, for in the same report from which the above statement seems to have been taken, it is said of these ratios that they do not for an instant permit of deductions in regard to the comparative state of criminality in these communities, as the ratios are determined largely by the use of the term sentence in dealing with minor offenders.